

### **REMARKS/ARGUMENTS**

Claims 1-2, 4-5, 10, 12-22 are pending in this application. Claims 12-20 have been deemed withdrawn. Applicant amends claims 1 and 20 to recite the capacitor structure more clearly. Claims 18-19 are amended to refer to claim 10. Claim 9 is cancelled. No new matter is introduced because the amendments are only a rearrangement of the previously recited features.

#### **Rejection under 102(e)**

Claims 1, 2, 4, 5, 9, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaplan. The Examiner alleged that the phrase “to form a capacitor” was merely a statement of a desired result, but suggested that “if the claim were amended to positively set forth a capacitor including the diaphragm and electrodes then it would define over the Kaplan et al reference.”

Applicants thank the Examiner for this suggestion, and have rearranged the claim to positively recite a capacitor. Thus, the rejection is now believed to be overcome.

### **CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. Applicant respectfully requests the Examiner contact the undersigned if there are any questions. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 503420, under Order No. 31175803-005001 (Valoir).

Dated: December 16, 2008

Respectfully submitted,

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(PATENT)

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